**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Special Appeal No. 36 of 2004

Date of Decision: 2nd December, 2006

A.F.R. (Approved for reporting)

_____
~~Not approved for reporting.~~

Date : 02.12.2006 Initial of Judge.

**Note : Bench Reader will attach this at the top of first page of The judgment when it is put up before the Judge for signature**.

**IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL**

**Special Appeal No. 36 of 2004**

Govind Prasad Gairola
S/o Sri Gaya Prasad Gairola
R/o Village & Post Triyugi Narain (Son Bhadra)
District – Chamoli, Garhwal …Appellant

**Versus**

1. The State of U.P.
   through the Secretary, Nagar Vikas Department,
   Civil Secretariat, Lucknow
2. U.P. Jal Nigam
   through the Chairman, 6 Rana Pratap Marg,
   Lucknow
3. The Managing Director
   U.P. Jal Nigam, 6 Rana Pratap Marg,
   Lucknow
4. The General Manager,
   Yamuna Pollution Control Unit,
   U.P. Jal Nigam, Ghaziabad
5. The Project Manager,
   Ganga Pollution Control Unit
   U.P. Jal Nigam, Haridwar
   District Haridwar
6. Uttaranchal Pay Jal Nigam,
   Through its Chairman, Dehradun …Respondents

Shri Kamlesh Tiwari Advocate on behalf of Sri Pankaj Miglani-Advocate for the appellant.
Mrs Beena Pandey, learned standing counsel (U.P. Govt) for respondent No. 1
Sri Sudhir Singh, Advocate for respondent Nos. 2 to 5.

**JUDGMENT**

**Coram : Hon'ble Rajeev Gupta, C.J.**
**Hon'ble J.C.S. Rawat, J.**

**Per Hon'ble J.C.S. Rawat, J.**

1. This special appeal under Rule 5 Chapter VIII of the High Court Rules has been filed against the judgment and order dated 09.08.2004 passed by the learned Single Judge of this Court in Writ Petition No.9A of 2003 (S/S), Govind

Prasad Gairola Vs. State and others, whereby the learned single Judge has dismissed the writ petition.

2. A writ petition bearing No.9A of 2003 (S/S) was filed before the learned Single Judge by the petitioner-Govind Prasad Gairola for the following reliefs:-

> i. To issue a writ, order or direction in the nature of mandamus commanding the opposite parties to regularize the petitioner for the post of the Draught's man and also to pay him the difference of salary of Rs. 1,68,369.80.
>
> ii. To issue any other appropriate writ order or direction which is deem fit and just in the circumstances of the case.
>
> iii. To allow the writ petition with cost.

3. The petitioner-Govind Prasad Gairola (now appellant in special appeal) was appointed as Draughtsman on 06.09.1985 on daily wages basis in Jal Nigam and continued working till 28.02.1987. The executive Engineer of the Project Division of U.P. Jal Nigam vide his letter dated 28.01.1988 sought permission from the higher authorities to appoint the petitioner as Draughtsman in the department. The petitioner also demanded salary for the post of Draughtsman against which he was working. Meanwhile, the petitioner was transferred from the Project Division to Ganga Pollution Control Unit, Haridwar on 01.03.1987 against the post of Work Agent but the work of Draughtsman was taken from the petitioner. The General Manager of the Project Division also sought permission from the Chief Engineer to appoint the petitioner as Draughtsman and the chief Engineer authorized the General Manager to hold the examination of the petitioner. The General Manger took the test of the petitioner and found him suitable for the post but

the Chief Engineer refused the permission to appoint the petitioner as Draughtsman. The Petitioner worked in the Nigam as a Work Agent but the work of Draughtsman was taken from the petitioner. The petitioner also made representation on 15.11.1995 alleging therein that he is being paid the salary of daily wager while he is performing the duties of the Draughtsman. The petitioner claimed the difference of salary of Rs. 1,68,369.80 between Work Agent and Draughtsman. Feeling aggrieved by this, the petitioner had filed the writ petition before the Court for seeking regularization and dues of salary.

4. The respondents filed counter affidavit on behalf of the Jal Nigam and pleaded that the petitioner was appointed on muster roll on daily wages basis as such he cannot claim the salary of Draughtsman in regular establishment. It is also pleaded in the counter affidavit that the petitioner never worked as Draughtsman in the establishment but he cleverly projected himself as a Draughtsman. It was further pleaded that there is no amount due as claimed by the petitioner.

5. After hearing the parties, the learned Single Judge had dismissed the petition on 9th August, 2006 and held that the petitioner is not entitled for salary or regularization to the post of the Draughtsman.

6. Feeling aggrieved by the said order, the present special appeal has been preferred by the appellant-Govind Prasad Gairola.

7. Heard learned counsel for the parties and perused the record.

8. Learned counsel for the petitioner (appellant) contended that the learned Single Judge erred in holding that the petitioner (appellant) did not perform the duties as Draughtsman on daily wages and as such, the conclusion arrived at that it is not establish from the record that the petitioner (appellant) had ever worked as a Draughtsman with the respondents is totally wrong. Learned counsel for the petitioner (appellant) further contended that the petitioner (appellant) was initially appointed on the post of Draughtsman on 06.09.1985 and he continued upto 28.02.1987. Thereafter, the petitioner (appellant) was transferred form the Project Division U.P. Jal Nigam, Dehradun to the Ganga Pollution Control Unit, Haridwar on 01.03.1987 against the post of Work Agent but despite of the fact that the work of Draughtsman was being continuously taken from the petitioner (appellant). It was further contended that the material on record supported the version of the petitioner (appellant). Learned counsel for the respondents refuted the contention and contended that the petitioner (appellant) had no legal right to be absorbed as a Draughtsman because he was appointed on daily wages basis. He never worked as a Draughtsman. The petitioner (appellant) had sought the relief to direct the respondents to regularize his services on the post of Draughtsman and also for payment of dues of salary of Rs. 1,68,364.80. It is not disputed that the services of the petitioner (appellant) had been regularized during the pendency of the writ petition on the post of the Work Agent in the pay scale of 825-1200 with effect from 01.04.1991 and it is not disputed that he had joined as regular Work Agent and he is getting the salary of the said post of Work Agent. Firstly, the petitioner (appellant) is seeking the regularization on the post of

Draughtsman. It is settled position of law that if a person is appointee on daily wages, he cannot claim to be absorbed or be made permanent. It is also settled principle of law that a temporary employee or a daily wage worker is continued for long time, he would not be entitled to be absorbed in regular services or made permanent merely on the strength of such continuance, if the original appointment was not made by following the due process of selection as provided by the relevant rules.

9. It is now settled position of law that courts cannot countenance oppointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give direction for regularization of services of the person who is working either as daily wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under the constitution.

10. It has been held in **Secretary, State of Karnataka & others Vs. Umadevi & Others** reported in **2006 AIR SCW p/1991** that :-

> *"43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to*

*do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent".*

Thus, the petitioner being the daily wager had no vested & legal right to be requlalarized against the post of the Draughtsman and he cannot claim the absorption of the said post. In view of the above, the learned Single Judge was justified in holding that the petitioner (appellant) was not entitled to be requlalarized against the post.

11. It was further pointed out that the respondents had taken the work of the Draughtsman from the appellant, as such, he is entitle to get the salary of the Draughtsman. The appellant was a daily wager and he cannot claim the salary till he is appointed as a Draughtsman in the said post. As we have pointed out earlier that he had no right to be absorbed against the said vacancy, as such, he cannot claim the salary of the Draughtsman. It is pointed out that the appellant had worked as a Draughtsman, as such, he is entitled to equal pay for the equal work. The learned Single Judge had not accepted the contention of the learned counsel for the appellant that he worked as a Draughtsman in the said department. Assuming that he had worked as a Draughtsman in the office of the respondents as a daily wager, even than he is not entitled for the same. If he was appointed daily wager Work Agent, he could have very well declined to work as a Draughtsman. Even then he had

worked as a Draughtsman on daily wages, he cannot claim the same salary which his counterparts are getting. The petitioner has no rights to claim the equal pay for equal work. When any person is appointed as daily wager or adhoc employee, he knows the nature of his appointment and the wages he would get after his engagement. He accepts the employment knowing the conseq uence of the employment. He also knows that he had been appointed by the appointing authority without any process being undertaken for selection and he had deprived a number of persons who were aspirant of the employment. He very well knows that he had got the employment with the sympathy of the appointing authority. Thus, he would be ready to face the consequences of the employment which he had received in relaxation of the authorities and behind the back of constitutional scheme. Thus, such employees whose induction in the service is itself against the constitutional scheme, create a class itself and they cannot claim parity with the duly appointed employees under the constitutional scheme. It has been held in **Umadevi (supra)** that :-

> *"39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par*

*with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even thought they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.*

12. In view of the above discussions, the petitioner (appellant) is not entitled to get the salary of the Drughtsman. The learned Single Judge was justified in holding that the petitioner (appellant) is not entitled to get any regular salary of Draughtsman. We are completely in agreement with the findings of the learned Single Judge. We do not find any force in the appeal.

13. The appeal devoids of merit & is liable to be dismissed and is dismissed accordingly.

14. No order as to costs.

**(J.C.S. Rawat, J.)  (Rajeev Gupta, C.J.)**

Dated 2nd December, 2006
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